IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5825 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDRAKANT RANCHHODLAL SUTHAR - Petitioner(s)
Versus
STATE OF GUJARAT & ORS & 1 - Respondent(s)

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Appearance :
MR TR MISHRA for Petitioner.
MR TANUJA KACHHI, AGP for Respondent No.1,
NS HARSHAL PANDYA for MR R PARESH UPADHYAY for Respondent 2

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/03/2007

ORAL JUDGMENT

By filing this petition, the petitioner has challenged order dated 20.08.1990 passed by respondent No.2, Annexure 'A', by which the respondent No. 2 Corporation has decided to recover Rs.7303/- from the petitioner being 40% of the total loss of Rs.18,257-05 suffered by the Corporation.

At the relevant time, the petitioner was serving as Assistant Engineer with respondent No.2, Gujarat Water Resources Development Corporation. The petitioner was issued charge sheet, the description of which is given at page 21 of the compilation of the petition. As per the same, during the period between 12.05.1986 to 24.05.1986, on Mr. M.A. Chauhan, Additional Assistant Engineer had gone to Calcutta and at that time, boxes of gun metal on which the signature of the said Mr. Chauhan were applied, were in the custody of the petitioner. When Mr. Chauhan came back it was found that the boxes were opened and thereafter resealed on which the signature of the petitioner were applied. It is alleged against the petitioner that he has never informed about the fact of opening and re-sealing of the gun metal box to Mr. Chauhan when he returned, and therefore, said Mr. Chauhan had not taken any action to ascertain the same physically. Later on, on physical verification, the quantity of gun metal was found to be less and the petitioner was called upon to explain the same.

After considering the explanation of the petitioner, ultimately it was found that the version of the petitioner is not correct and accordingly the aforesaid proportionate amount was ordered to be recovered from the petitioner.

On behalf of the respondent, affidavit in reply is filed, which is at page 51 to 62 of this compilation of this petition. In paragraphs 4.3 to 4.10, it is stated as under:

> “4.3 Actually, the stock of the gun metal from which the shortage, as aforesaid, was detected, was in custody of one Mr. M.A. Chauhan, Additional Assistant Engineer. However, during the relevant and material point of time, the said Mr. Chauhan, Additional Assistant Engineer had gone to Calcutta for official work. Since during the material point of time, the said Mr. Chauhan had gone to Calcutta, though the charge of the gun-metal was with Mr. Chauhan, in reality, physical custody thereof was with the petitioner as a result of Mr. Chauhan's absence. The stock of gun metal was lying in shed No.1.
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> 4.4 At this stage, it is pertinent to note that the said Mr. Chauhan, Additional Assistant Engineer had not officially handed over the charge of the gun-metal to the petitioner. It was also worthwhile to note that the box/boxes containing gun metal were duly sealed and were bearing signature of the said Mr. Chauhan, Additional Assistant Engineer.
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> 4.5 However, when Mr. Chauhan returned from Calcutta, it was found that seals on the wooden box/boxes containing gun metal were broken and the boxes were open and thereafter resealed. It will not be out of place to mention at this stage that the said newly put seal was of the petitioner herein which proved that the box/boxes were opened by the petitioner and that too in the absence of the said Mr. Chauhan who was officially having charge of the said gun metal.
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> 4.6 As a result of this, a notice/letter dated 21.1.1987 came to be issued calling

for the explanation in that behalf from the petitioner wherein it was specifically mentioned that shortage of about 472 kg of gun metal was detected and he was called upon to explain as to why he should not be held responsible for the said shortage.

As a result of the shortage of gun metal, the respondent-Corporation suffered financial loss of about Rs.18,257-05. Upon receipt of the aforesaid notice/letter, the petitioner asked for extension of time to give his reply. The petitioner gave his reply to the aforesaid letter/notice vide his letter dated 12.2.1987. As the said reply was not found satisfactory at all, the respondent-Corporation decided to initiate and conduct a regular and full-fledged departmental inquiry. Resultantly, a regular show cause notice /charge sheet dated 4.9.1987 came to be issued and served on the petitioner.

4.7 In reply to the petitioner's request for certain records, he was permitted to have inspection of the records referred to by him in his letter asking for records. Subsequently, the petitioner filed his reply dated 31.10.1987 and also requested for early inquiry.

4.8 The entire matter came to be referred to the Managing Director who, upon examining the issues, appointed one Mr. C.M. Patel, Director, Ground-Water Development Circle, Ahmedabad as Inquiry Officer.

Thereafter, the Inquiry Officer fixed the date for inquiry as on 26.2.1988, but the petitioner on the said date did not attend the hearing and informed by way of a telegram dated 24.2.1988 that an adjournment may be granted. Accordingly, the proceedings were adjourned to 7.3.1988 and the said aspect was duly intimated to the petitioner.

4.9 Upon conclusion of the departmental inquiry, conducted by Mr. C.M. Patel, Director, Ground-Water Development Circle,

> Ahmedabad, an Inquiry Report by the Inquiry Authority dated 20.4.1988 came to be submitted.
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> 4.10 On the basis of the Inquiry report and the evidence and material on record of the proceedings of the inquiry, proportionate responsibility of all concerned i.e. of the petitioner Mr. Suthar, as well as of Mr. Chauhan, Additional Assistant Engineer and Mr. K.B. Thakore, Work-charge Karkun, came to be fixed and accordingly, the petitioner having been found responsible and upon the charges levelled against him having been proved, he was asked to make good loss of Rs.18,257-05 by paying an amount of Rs.7,303/-. The competent authority passed necessary order dated 20.8.1990 a copy whereof has been annexed by the petitioner to the petitioner as Annexure 'A'."

Learned advocate Mr. Mishra submitted that before imposing the penalty, no inquiry was held against the petitioner and, therefore, the order is required to be quashed and set aside.

It is, however, required to be noted that recovery of the aforesaid amount cannot be said to be a major penalty under the Gujarat Civil Services [Discipline & Appeal] Rules, 1971. In fact, recovery of amount of any loss suffered by Government from pay of an employee is a minor penalty as per rule 6 of the Gujarat Civil Services [Discipline & Appeal] Rules, 1971 [hereinafter referred to as the Rules] At this stage, reference is required to be made to rule 6, which reads as under:

> 6. Nature of penalties.- Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member of the

State, Subordinate or Inferior Service namely:
*Minor Penalties*:
(1). Censure
(2). Withholding of increments or promotion.
(3). Recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Major Penalties

(4) xxx xxx xxx xxx
(8) xxx xxx xxx xxx

As per the provisions of Rule 9(1) of the Rules, the requirement of holding an inquiry is provided only for imposing major penalties specified in items (4) to (8) of rule 6 of the Rules. Thus, for passing any order imposing minor penalty, it is not necessary to hold an inquiry. Principle of natural justice was followed in view of the fact that his explanation was called for. Other employees are also subjected to similar order as total amount is recovered proportionately from the petitioner and two other employees.

Considering the aforesaid aspects of the matter, in my view, it cannot be said that the impugned order suffers from any illegality or is in violation of principle of natural justice. It is required to be noted that this Court cannot sit in appeal over the order of the disciplinary authority and take a different view. Even otherwise, considering the affidavit-in-reply as well as considering other documents on record, it cannot be said that any illegality is committed by the disciplinary authority in ordering recovery.

Mr. Mishra submitted that his client has already retired long back and without prejudice to his rights and contentions, in order to take his retiral dues, the petitioner has paid the amount in question under protest. Mr. Mishra has placed on record copy of letter written on 13.01.2003 written by the petitioner to the department wherein he has stated that he is paying the said amount by way of demand draft, which would be subject to the result of the petition. At the request of Mr. Mishra, the said letter is taken on record.

In view of what is stated hereinabove, in my view, the petitioner has failed to make out any case to show as to how the order in question is illegal, and, as pointed out earlier, it is the case of minor penalty wherein, after considering the facts and circumstances of the case, the authority has passed the above order by giving cogent reasons. I do not find any substance in the petition. The petitioner is, therefore, rejected. Rule is discharged. No order as to costs. Interim Relief if any, stands vacated.

[P. B. MAJMUDAR, J.]

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